STATE OF MICHIGAN

IN THE SUPREME COURT

ESTATE OF DANIEL CAMERON, by DIANE CAMERON & JAMES CAMERON, Co-GUARDIANS,	Supreme Court Case No. 127018
Plaintiff/Appellant.	Court of Appeals Case No. 248315
v	Washtenaw County Circuit Court Case No.02-549-NF
AUTO CLUB INSURANCE ASSOCIATION, Defefndant/Appellee.	

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AMICUS CURIAE BRIEF OF COALITION PROTECTING AUTO NO-FAULT (CPAN) IN SUPPORT OF PLAINTIFF-APPELLANT ESTATE OF DANIEL CAMERON

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STATEMENT OF INTEREST OF *AMICUS CURIAE* COALITION PROTECTING AUTO NO-FAULT (CPAN)

The Coalition Protecting Auto No-Fault ("CPAN") is a broad-based group formed to preserve the integrity of Michigan's model no-fault automobile insurance system. CPAN's member organizations and associations range from major medical organizations and patient advocacy groups directly involved in first-party no-fault issues to consumer groups that have members concerned with third-party claims. CPAN's membership is comprised of fourteen medical provider groups and thirteen consumer organizations:

CPAN: Coalition Protecting No-Fault	
Medical Provider Groups	**Consumer Organizations**
Michigan Academy of Physicians Assistants	Brain Injury Association of Michigan
Michigan Assisted Living Association	Disability Advocates of Kent County
Michigan Association of Centers for Independent Living	Michigan Paralyzed Veterans of America
Michigan Brain Injury Providers Council	Michigan Partners for Patient Advocacy
Michigan Chiropractic Society	Michigan Protection and Advocacy Services
Michigan College of Emergency Physicians	Michigan Rehabilitation Association
Michigan Dental Association	Michigan Citizens Action
Michigan Health & Hospital Association	Michigan Consumer Federation
Michigan Home Health Care Association	Michigan State AFL-CIO
Michigan Orthopedic Society	Michigan Trial Lawyers Association
Michigan Orthotics and Prosthetics Association	Michigan Tribal Advocates
Michigan Osteopathic Association	Michigan UAW
Michigan State Medical Society	American Association of Retired Persons
Michigan Nurses Association	

This case concerns whether the Revised Judicature Act, in particular whether its tolling provision for minors and insane persons, MCL 500.5851, applies to no-fault actions. Section 3145(1) of the Michigan Auto No-Fault Act, e.g. the "one year back rule" provision, provides that a lawsuit must be filed within one year of the date an expense was incurred. If no timely lawsuit is filed, the claimant is then barred from recovering no-fault benefits. Until recently, underage claimants, e.g., minors, and brain injured persons were exempted from the one year back rule by virtue of the minors and insane persons tolling provision in Section 5851 of the Revised Judicature Act (RJA). Thus, children and the brain injured have until now been protected from losing the right to recover no-fault benefits even if those responsible for acting for them somehow failed to file a lawsuit in a timely fashion.

In *Cameron*, the Court of Appeals concluded that the minors and insane persons tolling provision in the RJA had no application whatsoever to no-fault actions. In short, the Court found that by adding the words "under this act" to the minors and insane persons tolling provision when several major medical malpractice reforms were enacted into law in 1993 the provision's meaning changed so that it no longer applied to no-fault actions. According to the Court in *Cameron,* no-fault actions were no longer brought under the RJA.

A decision by this Court to affirm the Court of Appeals' ruling in *Cameron* will have far-reaching consequences for not only children and brain injured persons who happen to be involved in auto accidents, but also medical providers, because such a change in the existing law will do integral harm to the no-fault system in Michigan.

CPAN and its members are gravely concerned that if this Court upholds the Court

of Appeals' ruling in *Cameron,* a fundamental change will have been made to the no-fault system, which will have very significant financial consequences for the following: (1) medical providers, who make no-fault claims on behalf of patients, including children and the brain injured, to recover payment for medical treatment provided to them, and (2) children and the brain injured, who, as auto accident victims, and patients, need incurred medical bills to be paid by the no-fault system for them to avoid potentially devastating personal financial consequences.

Moreover, CPAN and its members also recognize that if the Court of Appeal's ruling in *Cameron* is affirmed, medical providers will simply have no other choice but to file lawsuits to protect their interests rather than risk losing the right to recover payment from a no-fault insurer for medical services provided to a child or brain injured person as an auto accident victim. Clearly, this Court's decision will have a significant impact on providers in their daily activities of providing medical services to injured persons. If the Court of Appeal's ruling in *Cameron* remains the law, the days of cooperation between providers and insurers in such catastrophic injury cases will end, only to be replaced by increased litigation whenever there is delay in paying a claim because of the one year back rule.

In the early 1970s, the automobile insurance business went through major changes with the advent of the no fault insurance laws in states like Michigan. At that time, no-fault was seen as the solution to an unwieldy third-party tort system. In Michigan, the legislature designed a no-fault system which would decrease litigation by creating a threshold for third-party tort claims and requiring prompt payment of first-party benefits claims. Allowable expenses (such as medical bills), replacement services, wage loss, and

survivor's loss were no longer to be a part of the third-party tort claim in most cases; instead, the duty to pay for such items under the no-fault system was typically to rest with one's own insurance company. *Underhill v Safeco Ins Co,* 407 Mich 175, 191; 284 NW2d 463 (1979).

In adopting a no-fault system, however, the legislature did impose certain limitations on first-party claims, as set forth in MCL 500.3145 (1), including a bar on recovering "benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced". This provision is commonly known as the "one year back rule."

Before *Cameron*, it had always been interpreted as being subject to the tolling provisions under the RJA. In *Cameron,* the Court of Appeals, rejecting decades of precedent, held that the minor and insane persons tolling provision did not apply to no-fault actions.

Without question, a decision by this Court to affirm the Court of Appeal's ruling in *Cameron* would have far-reaching consequences for medical providers and their patients. In short, the floodgates of litigation will be wide open as a result of such a decision. Even more significantly, providers will often simply go unpaid whenever a lawsuit is not filed within one year of providing treatment to a child or brain injured auto accident victim.

In many cases, providers will be limited to a much reduced payment for the medical services provided, which payment will come only at the taxpayer's expense from the medicaid program, assuming the injured person was income eligible, or medicare, if the patient meets that program's age and/or disability requirements.

For those auto accident victims not eligible for either government program,

medical providers would have no choice but to seek full recovery from the injured person as patient. In many cases, payment simply would not be made because of personal financial problems and the high cost of paying for medical services.

In those situations, many individuals would be forced to file bankruptcy to erase the debt owed to providers after being injured. Such consequences harm not only auto accident victims, who are children or brain injured, as well as medical providers, but society as a whole, because such effects only increase the overall health care costs for everyone.

In sum, CPAN and its members are concerned about the likely effects of altering the law as it currently exists by this Court affirming the *Cameron* ruling. CPAN believes Michigan has a superior no-fault system that was formed for the very purpose of preserving quality health care and prompt payment of medical bills remains vital to its proper functioning. It should continue to remain available to the most vulnerable members of our society - children and the brain injured. Thus, CPAN, urges this Court to reverse the Court of Appeals' unfounded ruling in *Cameron* so that the current no-fault claims system is not disrupted to the great detriment of everyone interested in our current health care system.

CONCURRING STATEMENT OF JURISDICTION

Amicus Curiae CPAN concurs with the Statement of Jurisdiction by Plaintiff-Appellant, Estate of Daniel Cameron, in its Brief on Appeal.

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CONCURRING STATEMENT OF QUESTIONS INVOLVED

Amicus Curiae CPAN concurs with the Statement of Questions Involved by Plaintiff-Appellant, Estate of Daniel Cameron, in its Brief on Appeal

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CONCURRING STANDARD OF REVIEW

Amicus Curiae CPAN concurs with the Standard of Review as stated by Plaintiff-Appellant, Estate of Daniel Cameron, in its Brief on Appeal.

CONCURRING STATEMENT OF FACTS

Amicus Curiae CPAN concurs with the Statement of Facts by Plaintiff-Appellant, Estate of Daniel Cameron, in its Brief on Appeal.

INTRODUCTION

The Court of Appeals through its ruling in the case now before this Court, *Cameron v Auto Club Ins Co,* has elevated a merely stylistic technical change in the legislative drafting style used by a unelected bureaucratic official from the Legislative Service Bureau to a statutory change somehow intended by the Legislature, albeit completely unspoken, which will ultimately affect the recovery of no-fault benefits for vast numbers of children, the brain injured, and the providers who care for them after a devastating auto accident.

Defendant-Appellee ACIA has constructed its argument out of whole cloth by attempting to claim the textualist highground in this case. In so doing, however, ACIA has ignored the legislative history of this innocuous change to the RJA, and instead, read a fundamental change into the provision's meaning simply because the words "under this act" were added by the bill drafter to clarify the statute's existing meaning, and make the language of each provision consistent with the new sections being added to the provision. In actuality, the clear, unambiguous language of Section 5851(1) of the RJA – the minors and insane persons tolling provision – means the same thing it has always said, albeit in slightly different ways, which is that tolling for such persons applies in all civil actions, because all civil actions, including no-fault, must be brought under the RJA.

The Court of Appeals' failure to recognize this simple fact in its *Cameron* ruling must be reversed by this Court or the entire court system unified under the RJA will be thrown into complete disarray – the question of whether tort reform, which was

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accomplished under the RJA, applies to no-fault tort claims will only be among the first question litigants will ask the trial courts to revisit in light of the purported legal basis for the *Cameron* ruling.

ARGUMENT

I. THIS COURT MUST REVERSE THE COURT OF APPEALS' RULING IN *CAMERON* BECAUSE NO-FAULT ACTIONS ARE CLEARLY ACTIONS BROUGHT UNDER THE REVISED JUDICATURE ACT (RJA) AND THUS, TOLLING FOR MINORS AND INSANE PERSONS IS TO BE APPLIED

A. The legislative history of MCL 600.5851(1) demonstrates that no-fault actions are brought under the RJA.

The preamble to the Revised Judicature Act (RJA) of 1961, as amended in 1993, unequivocally states that it is an act meant to *"revise and consolidate the statutes relating to the organization and jurisdiction of the Courts of the State"* as well as the *"time within which civil actions and proceedings may be brought in the Courts of this State"*. Moreover, MCL 600.102 of the RJA clearly states that "*[t]his Act is remedial in character and shall be liberally construed to effectuate the intents and purposes"* of the Act.

This Court, through no less distinguished a jurist, than the Honorable Thomas E. Brennan, Jr., has long held that the purpose of the RJA is solely to effect procedural improvements, not to advance social, industrial, or commercial policy in substantive areas. *Connelly v Paul Ruddy's Co*, 388 Mich 146 (1972).

The issue for this Court is one that focuses on the savings provision at § 5851(1) of the RJA which was most recently amended in 1993. The 1993 amendments began with House Bill No. 4007 (HB 4007) and Senate Bill No. 270 (SB 270).

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HB 4007, which was introduced on February 2, 1993, retained the phrase *"an action"* which originated from the 1972 amendment to the Revised Judicature Act. The 1972 amendment occurred when our the Legislature changed the age of majority from 21 to 18 years of age. The 1972 amendment to the RJA savings provision slightly changed its wording from *"any action"* which originated in the 1961 amendment to the Revised Judicature Act.

According to the Court of Appeals below, however, this change in the wording is of little importance because the phrases mean the same thing. In this regard, the court in *Cameron v Auto Club Ins Assoc*, 263 Mich App 95 (2004), stated at Footnote 1, in pertinent part, the following:

> ***We discern no difference between*** *'an action' or 'any action' for purposes of this case;* ***both terms refer to all actions without limitation.*** (emphasis added)

Accordingly, the language originally introduced on February 2, 1993 in HB 4007 as to the savings provision of § 5851 held true to the statutory language from the prior 30 years. In other words, HB 4007, as introduced, and in a manner consistent with existing RJA tolling, in no way limited its application; tolling applied to all civil actions, even statutory schemes, such as no-fault actions, which also have their own self-contained statute of limitations.

SB 270 was introduced and referred to the Committee on Judiciary just days before HB 4007. In SB 270, the phrase "*under this act*" was used into § 5851(1). According to the Senate Fiscal Agency (SFA), prepared by non-partisan Senate staff for use by the Senate in its deliberations, the substantive purpose of the bill was to contain

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prisoners' lawsuits and to modify medical malpractice limitation periods. Notably, the SFA expressly stated that the change did not affect the minority or insanity tolling provisions. In this regard, the SFA analysis states, in pertinent part, the following:

> *The Bill would amend the Revised Judicature Act to eliminate imprisonment as a cause for tolling the Statute of Limitations in a civil procedure.* ***The Bill would retain infancy and insanity as recognized disabilities for tolling the Statute of Limitations.*** (emphasis added)

This analysis is very compelling and demonstrates the reversible error committed by the Court of Appeals, below. Clearly, it was not the intent of the legislature to eliminate minority or insanity as recognized disabilities for tolling the statute of limitations for all civil actions filed in this state, regardless of whether a particular statutory scheme has its own self-contained statute of limitations. Rather, the added language "*under this act*" was merely a technical change made by the drafter of the amending language as part of the constant process of trying to improve and make consistent the language used in statutes.

Respectfully, it is illogical that the 1993 amendment to the savings provisions of the RJA, which was enacted to modify certain medical malpractice claims and claims of prisoners, could have the sweeping effect given to it by the Court of Appeals, below in destroying over 30 years of tolling to minors and the mentally incompetent. On the other hand, if it was the legislature's intent to eliminate tolling for this uniquely vulnerable group of patients, then there would have been significant legislative history indicating that goal

THERE IS NONE.

Since the meaning of the 1993 amended language is not clear to some on its face, the use of legislative history is absolutely appropriate. See generally, *In re Certified*

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Question, 468 Mich 109, 114 (2003); *Robinson v Detroit*, 462 Mich 439 (2000).

What Defendant-Appellee ACIA advocated below is known as a "conditional rights" analysis of the interplay between the 1993 amendment to the RJA and the no-fault statute, which contains its own statute of limitations. This Court rejected such a conditional rights analysis in 1975 in the case of *Lambert v Calhoun*, 394 Mich 179 (1975). In *Lambert,* this Court held that *"while conditional right analysis requires that statutory actions be commenced within a built in time limitations unenlarged by general savings provisions, the question is one of legislative policy and intent". Id* at page 191. This Court went on in *Lambert* to state that there is "*scant reason*" to ascribe to a legislature an intent to distinguish between common law and statutory causes of action in the application of savings provisions. *Id* at 191.

Further, this Court held in *Lambert* that minors and mentally incompetent persons are under the same disability whether their actions be common law or statutory; i.e., the defendant in one case is generally in no greater need than the defendant in the other of protection from delaying commencement of the action. This Court was unable to distinguish the two scenarious or to ascribe to the legislature such an intention. *Id* at 191.

Notwithstanding *Lambert*, the Court of Appeals below concluded that the legislature adopted the conditional rights analysis. This is reversible error. This Court in *Lambert* held that *"[t]he general savings provisions of the Revised Judicature Act apply to causes of action created by Michigan Statutes". Id* at 192. This Court's decision in *Lambert* continues to be the law in Michigan and must be followed , as it was in *Professional Rehabilitation Associates v State Farm Mut Ins Co*, 228 Mich App 167; 577

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NW2d 909 (1998).

In *Professional Rehabilitation Associates*, the Court held that *"the savings provision applies to actions for the recovery of personal protection insurance benefits under the no-fault act"*. *Id* at 175. Despite this clear language, the Court of Appeals below ignored this holding which followed *Lambert,* stating that the previous panel had erroneously cited the 1993 version of the provision when the benefits in question had been denied in 1992.

However, the fact that the benefits in *Professional Rehabilitation Associates* were denied in 1992 and that the 1993 amendment did not apply to causes of action arising prior to October 1, 1993, should be of little consequence to this Court. The simple point is that in *Professional Rehabilitation Associates,* the Court analyzed the facts in light of the 1993 amendment, which included the language "*under this act*", and found that the savings provisions of the amended RJA applies to no-fault PIP benefit actions. Thus, *Professional Rehabilitation Associates* clearly upheld the ruling of this Court in *Lambert*. *Lambert* remains good law and the Court of Appeals' refusal to follow it constitutes reversible error.

Based upon the foregoing, reversal of the Court of Appeal's ruling in *Cameron* is clearly warranted and the holding of the trial court should be reinstated.

B. Traditional principles of statutory construction interpreting MCL 600.5851(1) demonstrate that no-fault benefit actions are brought under the RJA.

This Court has repeatedly made clear that judicial legislation is strictly prohibited. *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 166-167 (2000). Yet, that was

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precisely what Defendant-Appellee ACIA invited the Court of Appeals' panel to engage in below. Simply put, Defendant-Appellee ACIA tried to convince the Court of Appeals that the RJA tolling provisions do not apply to lawsuits brought under a statute with its own, self-contained statute of limitations like the no-fault act [MCL 500.3145(1)].

Nothing in the language of the RJA, however, remotely allows for this interpretation. Specifically, section 600.5851(1) of the RJA, as amended by 1993 PA 78, states:

> *Except as otherwise provided in subsection (7) and (8), if the person first entitled to make an entry or bring an action under this act is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed though the death or otherwise, to make entry of bring the action although the period of limitations has run, This section does not lessen the time provided in section 5852.*

The Court of Appeals correctly appreciated that Defendant-Appellee ACIA's proposed interpretation went too far and that had it adopted this interpretation, it would have committed reversible error because the court would have had to engage in an incredible feat of judicial legislation to connect all the dots necessary to complete ACIA's vision.

Unfortunately, instead of simply rejecting Defendant-Appellee ACIA's proposed interpretation and leaving Michigan's well-settled jurisprudence alone, the Court of Appeals committed reversible error by unnecessarily reaching the ultimate result desired by the Defendant-Appellee ACIA for a completely different reason. Specifically, the Court of Appeals committed reversible error by holding, altogether, that no-fault actions are not brought under the RJA. In this regard, the Court stated in pertinent part, the following:

> *Thus, we find that the amended version of the savings*

> *provision does not apply to the no-fault act* ***because it is not a 'action under [the RJA].'*** (emphasis added)

Cameron, supra. This holding is completely felicitous because *all* no-fault act civil actions are brought under the RJA. The point is a simple one: whether for PIP benefits under § 3107(1) and § 3108, or for tort liability actions for non-economic damages under § 3135(1), all no-fault actions must be brought under the RJA. Yet, the Court of Appeals somehow managed to lose its way and hold that no-fault actions are not subject to the RJA.

Such a result makes no sense given that the RJA is the fundamental procedural mechanism which governs our court system. For example, RJA judgement interest under MCL 600.6013 is properly awarded to the prevailing plaintiff, even in a no-fault action. *See McKelvie v Auto Club Ins Ass'n*, 203 Mich App 331 (1994), *later appeal*, 223 Mich App 446 (1997), *rev'd on other grounds*, 459 Mich 42 (1998); *Beach v State Farm Mut Auto Ins Co*, 216 Mich App 612 (1996), where prejudgment interest was awarded from the date the complaint was filed with respect to those bills that were due and owing at the time of filing, but which the no-fault insurer refused to pay on behalf of the claimant

This result has been repeatedly upheld in the appellate courts as to prejudgment interest even though 1993 SB 270 added the same language "under this act" to Section 6013(1) of the RJA. While Defendant-Appellee ACIA may suggest that the use of the words "in a civil action" in the preceding sentence makes the interest provisions of the RJA broader, and thus, applicable to no-fault actions, such an interpretation would ignore the words following that phrase, which are "as used in this section", as well as rendering meaningless what should be for them be the more significant addition to the statute's

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language, the words "under this act" being added to describe when the new rule applies.

The basic question is clear: How can interest be payable under the RJA for actions that are not filed under the RJA? The answer is likewise clear: It cannot. Accordingly, the Court of Appeals' holding that lawsuits seeking payment of no-fault PIP benefits are not filed under the RJA, is, with all due respect, wrong and contrary to years of established Michigan jurisprudence. ***On the other hand, if the Court of Appeals' holding is considered correct, then application of its holding as to all tort liability actions for non-economic damages under § 3135(1) of the no-fault act will bar application of all of the so-called "tort reform" provisions of the RJA.***

If Defendant-Appellant ACIA is correct, Defendant tortfeasors will now be subject to joint and several liability, contrary to MCL 600.2956. They will not be able to argue the allocation of fault to a non-party, contrary to MCL 600. 2957. They will not be able to preclude the testimony of plaintiffs' scientific experts whose opinions are not based upon scientific testing, peer review or accepted standards, contrary to MCL 600.2955.

Moreover, now plaintiffs will be permitted to file lawsuits in any venue they wish, especially Wayne County, contrary to MCL 600.1629. Finally, even if plaintiffs are found to more than 50% at fault for their own injuries, they still are able to claim and recover non-economic damages, contrary to MCL 600.2959.

Clearly, the above-referenced examples were never intended by the legislature when enacting the tort-reforms provisions of the RJA. These examples, however, clearly demonstrate the reversible error committed by the Court of Appeals' holding in *Cameron*. Based upon the foregoing, reversal is clearly warranted under the circumstances and the

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holding of the trial court should be reinstated immediately.

C. *The consequence of the Court of Appeals' error leaves the most vulnerable group of patients (children and the mentally disabled) unprotected by the law, it unfairly destroys medical providers' rights to recover the full charges for their medical services rendered to this particular class of patients and instead, shifts the burden of paying for this care to the already beleaguered social welfare agencies and Michigan taxpayers.*

Ever since the No-Fault Law went into effect, § 3145 (MCL 500.3145) has imposed two separate one year statutes of limitations with respect to enforcing claims for no-fault benefits. The first rule requires written notice of a claim within one year of the date of the occurrence. In this regard, section 3145(1) states in pertinent part,

> *An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury* ***unless written notice of injury as provided herein has been given to the insurer within one year after the accident*** *or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. . . .* (emphasis added)

The second rule imposes a "one year back rule" which prevents enforcement of a claim for unpaid services where the expenses were incurred more than one year before a lawsuit was filed. Section 3145(1) states:

> *If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred.* ***However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced.***

However, the Michigan appellate courts have long recognized that the minority and

mental incompetency tolling provisions of the RJA (MCL 600.5851(1)) apply to no-fault claims thereby rendering the one year notice rule and the one year back rule inapplicable in those situations. *See Geiger v DAIIE,* 114 Mich App 283 (1982); *Hartman v Insurance Company of America,* 106 Mich App 731 (1981); *Rawlings v Aetna Casualty & Surety Division,* 92 Mich App 268 (1979); *Lambert, supra; Professional Rehabilitation, supra.*

The Court of Appeals has, in holding that no-fault PIP benefits actions are not brought under the RJA, effectively overturned that long standing case law and subject both of these vulnerable groups of patients (children and the mentally disabled) to these harsh claim preclusion rules. If the Court of Appeals' decision were to stand, not only will children and mentally disabled persons be barred from enforcing claims for no-fault benefits that were not timely pursued in accordance with the one year provisions of § 3145, but their medical providers (doctors, hospitals, therapists, in-home care givers, etc.) could likewise be unfairly precluded from enforcing payment for services rendered by the unfortunate circumstance of timing of the decision. ***The impact of this decision on the Michigan treasury is potentially catastrophic. This would result in hundreds of thousands of dollars of unpaid claims to ultimately become the responsibility of the already beleaguered and overburdened social welfare agencies and Michigan taxpayers.***

Based upon the foregoing, peremptory reversal is clearly warranted and the holding of the trial court should be reinstated.

D. Alternatively, prospective application is required.

Should this Honorable Court decide not to reverse the Court of Appeals, then it

should at least declare that *Cameron* ruling shall only apply to accident victims whose motor vehicle accidents occur after the date the opinion was issued, being July 13, 2004. It is undeniable that the *Cameron* decision overturned clear and uncontradicted jurisprudence relied upon by the bench, bar and those that the RJA tolling provisions protected most: children and the mentally disabled, the medical community (in the no-fault setting) that treats this special group of patients, and the social welfare agencies and Michigan taxpayers that, until now, have never been required to pay for the care reasonably necessary for this special group of patients. Based upon the foregoing, prospective application of the *Cameron* decision is required.

When a court develops a new test that destroys a vested right, then the new case rule is to be applied prospectively, only. The Michigan Supreme Court said this most recently in its opinion, authored by Chief Justice, Maura Corrigan, in *Pohutski, et al v Allen Park, et al*, 465 Mich 675 (2002). In this regard, Justice Corrigan stated in pertinent part at pages 695 - 699:

> *Although the general rule is that judicial decisions are given full retroactive effect, Hyde v Univ of Mich BD of Regents, 426 Mich 223, 240; 397 NW2d 847 (1986),* ***a more flexible approach is warranted where injustice might result from full retroactivity.*** *Lindsay v Harper Hosp, 455 Mich 56, 68; 564 NW2d 861 (1997).* ***For example, a holding that overruled settled precedent may properly be limited to prospective application.*** *Id. ...*
>
> *This court adopted from Linkletter v Walker, 381 US 618; 85 S Ct 1731, 14L ed2d 601 (1965), three factors to be weighed in determining when a decision should not have retroactive application. Those factors are: (1) the purpose to be served by the new rule, (2) the extent of reliance on the old rule, and (3) the effect of retroactivity on the administration of justice. People v Hampton, 384 Mich 669, 674; 187 NW2d 404*

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(1971). . . .

***

> *Thus, if we applied our holding in this case retroactively, the plaintiffs in cases currently pending would not be afforded relief under Hadfield or 2001 PA 222.* ***Rather, they would become a distinct class of litigants denied relief because of an unfortunate circumstance of timing****. . . .*(emphasis added)

Based upon the foregoing, the same rationale should apply to *Cameron,* and if the Court of Appeal's ruling is upheld by this Court, it should be applied prospectively only.

CONCLUSION AND RELIEF REQUESTED

The Court should peremptorily reverse the holding of the Court of Appeals for the reasons stated by Plaintiff-Appellant, Estate of Daniel Cameron in its Brief on Appeal. In so doing, the Court should recognize the fact that the Michigan no-fault law is, to the average persons, a most confusing statute with respect to which few have a thorough understanding of the scope and extent of the benefits available under the statute.

To require children and mentally impaired persons to file written notice of claim within one year or to bring a lawsuit within one year of the most recent allowable expense or suffer the penalty of losing coverage, places an onerous and completely unwarranted responsibility on those who are least able to protect themselves. If this happens, then the most vulnerable in our society, our children and those with severe mental disabilities, could forever lose the no-fault promise of lifetime, unlimited medical and rehabilitation benefits.

The consequence of such a loss is staggering. Not only would such individuals be denied the care and services they need to recover from their injuries, the heavy cost

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of taking care of such individuals would be shifted to other aspects of our society and our government who were never intended to be the indemnitors of no-fault medical claims.

In adopting its unique "model no-fault law", Michigan has chosen to provide unlimited lifetime medical care for all of our auto accident victims. To impose a one year statute of limitations without the benefit of the minority and mental disability tolling provisions of the RJA, would create a legal trap for minors and the mentally disabled resulting in the loss of the life-sustaining benefits of no-fault. This was never the intention of the Michigan Legislature nor has it ever been the policy of the Michigan appellate courts. This is precisely why Michigan enacted the tolling provisions of the RJA – to protect those, who because of minority or mental incompetency, cannot protect themselves.

CPAN, as a broad-based coalition of medical providers and consumers groups, stands with Appellee Cameron in this case for the reasons stated above. Moreover, CPAN firmly believes that to overrule long standing appellate case law applying the tolling provisions of the RJA to no-fault claims would create havoc and result in undue burdens for medical providers and result in the interruption and possible cessation of services to children and mental incompetents who "get trapped" by oppressive one year enforcement rules. This could clearly have the effect of increasing the cost of delivering health care to all citizens of the state of Michigan – a cost that is already approaching dangerous limits.

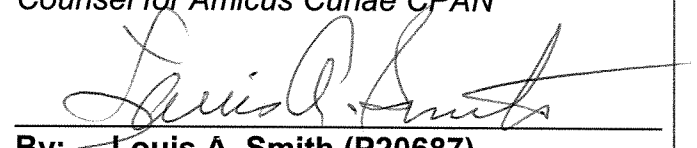
Alternatively, the *Cameron* decision should be applied prospectively, only to those accident victims whose motor vehicle accidents occur after July 13, 2004.

WHEREFORE, *Amicus Curiae* CPAN respectfully requests this Honorable Court

reverse the Court of Appeals and instead, reinstate the decision by the trial court.

Respectfully submitted:

SMITH & JOHNSON, ATTORNEYS
Counsel for Amicus Curiae CPAN



By: Louis A. Smith (P20687)

Dated: **July 6, 2005**

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